CF0000058269

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Division Bench (Criminal)

IN THE HIGH COURT OF MADHYA PRADESH AT JABALPUR.

CRIMINAL APPEAL NO. 214 /1995

Appellant:- Smt. Charanmati alias Kuntinbai w/o Ravishankar Yadav, aged about 40 years, Resident of Bardarha, P.S. Sarangarh, District Raigarh. In Jail

Versus

Respondent:- State of Madhya Pradesh through Police Station Sarangarh, Distt. Raigarh.

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Filed on 2-2-95
by Shri M.S. Bhatti

CRIMINAL APPEAL UNDER SECTION 374 OF THE CODE OF CRIMINAL PROCEDURE

HIGH COURT OF CHHATTISGARH : BILASPUR
(Division Bench)

CORAM: ***Hon'ble Shri Vijay Kumar Shrivastava &***
Hon'ble Shri Dhirendra Mishra, JJ.

CRIMINAL APPEAL No.214/95

Appellant — Smt. Charanmati @ Kuntibai
w/o. Ravishankar Yadav,
aged about 40 years,
r/o. Bardarha,
PS, Sarangarh,
Dist. Raigarh.

Versus

Respondent — State of C.G. through
Police Station Sarangarh,
Dist. Raigarh. CG.

PRESENT

Mr. Roop Naik, Counsel for the appellant.

Mr. M.P.S. Bhatia, Panel Lawyer for the respondent/State.

JUDGMENT
(Dated 14/06/2006)

Per Vijay Kumar Shrivastava, J.

This appeal under Section 374 (2) of the Cr.P.C., is directed against the judgment of conviction and order of sentence dated 01/10/1994 passed by IInd Additional Sessions Judge, Raigarh, in Sessions Trial No.200/93 by which the appellant has been held guilty for committing offence of murder punishable under Section 302 of the I.P.C., and was sentenced to undergo imprisonment for life.

2) Briefly stated the case of the prosecution is that on 26/01/1993 at about 4.00 p.m. in the evening, Jyotibai a child of

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eight months of tender age was playing with her brother Vikas aged five years in the court-yard of her house. Appellant resides in the vicinity of their house who has some animus with the mother of Jyotibai and Vikas, therefore, she administered Endocil insecticide poison to Jyotibai. After consuming the poisonous drug Jyotibai became restless. Her brother Vikas rushed to call his father Pitambar. Pitambar came to his house and saw the deteriorating condition of his child. The child Jyotibai was taken to hospital where she died. Information was given by the Medical Officer to SHO Sarangarh regarding the death of Jyotibai. Merg intimation was recorded. SHO, Sarangarh came to hospital to conduct the inquest. Inquest report was prepared. Enquiry regarding cause of death was also made. The dead body of Jyotibai was sent for autopsy. On enquiry, SHO Sarangah came to know through the witnesses that poisonous drug was administered to Jyotibai by the appellant, therefore, he recorded first information report on the spot against the appellant under Sections 302 & 328 of the IPC.

3) Medical Officer conducted the autopsy, but could not find any injury and also could not determine the nature and cause of death, therefore, he preserved viscera for chemical examination. During investigation one tin box, which is the box of Endocel insecticide, was seized from the husband of the appellant. On memorandum statement of appellant one steel bowl said to be used for administering the insecticide to Jyotibai was recovered and seized from the appellant. Spot map was prepared. Witnesses were examined under Section 161 of the Cr.P.C. Appellant also

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made extra judicial confession before witnesses. Viscera preserved by the Medical officer, bowl and tin box were sent for examination. Chemical examiner after examining those articles gave his report wherein he found that the tin box and viscera were containing Endocel insecticide.

4) After investigation challan was led in the Court of Chief Judicial Magistrate, Raigarh, who committed the case to the Court of Sessions for trial. Charge under Section 302 of the IPC was framed against the appellant and the same was read over and explained to her, who abjured the guilt. Her defence was that she has been falsely implicated in the crime due to animosity.

5) Learned trial Court relying on the evidence of Samaru (PW/4) and Karra (PW/12) held that the appellant voluntarily made extra judicial confession before these witnesses and she failed to explain how the child consumed the poison, therefore held the appellant guilty for committing murder of Jyotibai, punishable under Section 302 of the IPC, accordingly, convicted and sentenced.

6) Hon'ble the Apex Court has led law from time to time on circumstantial evidence. Hon'ble the Apex Court while delivering judgment in ***State of M.P. Vs. Sanjay Rai, reported in (2004) 10 SCC 570, relying on the judgments delivered in Hukam Singh Vs. State of Rajasthan, reported in (1977) 2 SCC 99, Eradu Vs State of Hyderabad, reported in AIR 1956 SC 316, Earabhadrappa Vs. State of Karnataka, reported in***

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(1983) 2 SCC 330, State of U.P. Vs. Sukhbasi, reported in AIR 1985 SC 1224, Balwinder Singh Vs. State of Punjab, reported in AIR 1987 SC 350, Ashok Kumar Chatterjee Vs. State of M.P.,. reported in AIR 1989 SC 1890, Bhagat Ram Vs. State of Punjab, reported in AIR 1954 SC 521, C. Chenga Reddy Vs. State of A.P., reported in (1966) 10 SCC 193, Padala Veera Reddy Vs. State of AP., reported in AIR 1990 SC 79, State of UP Vs. Ashok Kumar Shrivastava, reported in (1992) 2 SCC 86, Hanumant Govind Nargundkar Vs. State of M.P., reported in AIR 1952 SC 343 and Sharad Birthichand Sarda Vs. State of Maharashtra, reported in AIR 1984 SC 1622, has held that conviction can be based solely on circumstantial evidence, but it should be tested on touchstone of law relating thereto laid down by the Apex Court. Law settled by the Apex Court on circumstantial evidence is that the circumstances must be cogently and firmly established and when all the circumstances taken cumulatively should form a chain so complete that there was no escape from the conclusion that within all human probability the crime was committed by the accused and none-else and incapable of any other hypothesis than that of the guilt of the accused. Such circumstantial evidence should not only be consistent with the guilt of the accused, but should be inconsistent with his innocence.

7) So far as extra judicial confession is concerned, law is settled that if extra judicial confession is made before a person to whom maker reposes confidence and the extra judicial confession is clear, cogent and appeared to have been made in the normal

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course without any pressure, such extra judicial confession can alone be accepted and based for determining the guilt.

8) It is not disputed that Jyotibai died as a result of consumption of Endocel insecticide. Even otherwise, from the medical report (Ex.P/8), postmortem report Ex.P/11-A, the report of Chemical Examiner (Ex.P/12), and the oral evidence of Dr. Anil Kumar Tirki (PW/6), it is established that Jyotibai died as a result of consumption of Endocel insecticide

9) Samaru (PW/4), a village Kotwar in his examination-in-chief, has stated that on enquiry made by Puniram, Murlidhar, Arjun and Doloram, appellant stated that she putting Endocel drug in a bowl administered it to Jyotibai, but in cross examination he categorically stated that after a month Police came to investigate the offence and after arrival of Police he could come to know about the aforesaid statement. He also stated that the appellant did not disclose anything to Police. From his statement, it appears that when Police came to investigate the offence and enquired the matter, during that time on enquiry being made by some villagers, appellant disclosed the above fact. It is evident that Police was there and it cannot be believed, beyond doubt that in absence of Police, above statement was made by the appellant. Therefore, if any confession has been made by the appellant, it was in presence of the Police and in the light of Section 25 of the Indian Evidence Act, the said statement was not admissible. Arjun and Doloram have not been examined by the prosecution. Witness Muralidhar (PW/7) who was one of the persons who enquired from

the appellant, has been examined by the prosecution, but he did not support the story of extra judicial confession. Murlidhar (PW/7) very specifically stated that appellant did not admit or disclose anything before him.

10) Another witness relied upon by the trial Court is Karra (PW/12). Learned trial Court in para 17 of the judgment clearly stated that a part of statement of Karra (PW/12) is not believable. It is also evident that Karra (PW/12) was very much interested to get appellant convicted, therefore, he even tutored child witness Vikas to depose against the appellant. Karra (PW/12) in para 2 of this statement stated that he, Murlidhar and Arjun called the appellant and enquired her about the incident. She only said that she did nothing and prayed to save her. Further, in para 3 of his statement, he stated that Police came to investigate the crime and enquired from the appellant, but appellant did not disclose anything to Police. Therefore, Police asked the villagers to question the appellant and thereafter appellant narrated that she administered Endocel insecticide to Jyotibai. Here again, it is evident that the statement made by the appellant was not in the absence of Police, but it was the Police who enquired through the villagers from the appellant and in presence of Police, appellant disclosed the above fact. The said admission is not admissible in view of Section 25 of the Indian Evidence Act.

11) It is pertinent to mention that in para 10 of the statement, the witness Karra (PW/12) stated that in the night at about 9.p.m. Police enquired with the appellant regarding the tin box. Appellant did not disclose anything to Police, but in the

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midnight at 3.00 a.m. she told him. She without being released from the custody of Police, how is it possible for her to leave the place and narrate the story when apparently Police took Charanmati into custody and enquiry was going on.

12) Karra (PW/12) in his cross examination clearly stated that on the date of incident he came to know the fact that appellant had administered Endocel insecticide to Jyotibai, but he never intimated the fact to Police and even did not visit the hospital. After death of Jyotibai also he did not give information to father of the deceased. He further says that after death of Jyotibai, on the next day he came to know the incident from Vikas.

13) From the statement of Karra (PW/12) , it is evident that his statement is not only contradictory, but also unnatural. Even he was very much interested in getting the appellant convicted. From his statement, it is also clear that there was no occasion to appellant to go and inform this witness about the incident.

14) From the aforesaid discussions, it is clear that extra judicial confession relied upon by the trial Court was not admissible. The witnesses Samaru (PW/4) and Karra (PW/12) were not the persons, on whom appellant may repose confidence to confess the guilt after a period of one month that too when Police came to investigate the offence. On close scrutiny, it is also apparent that both these witnesses on the fact of extra judicial confession were not reliable. As per prosecution story the poison

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was kept in steel bowl and was administered to the child. The bowl was recovered at the instance of the appellant and the same was sent for chemical examination, but chemical examiner did not find any poison in the utensil. Pitambar (PW/10) father of the deceased Jyotibai in his statement stated that when he came to his house, Jyotibai was in the lap of the appellant. From his cross examination it is evident that appellant is issueless and she was given shelter by him and in their absence appellant was taking care of their three children. There is no evidence to establish that appellant had any animosity with these children or their parents. When Jyotibai was taken from the hands of Charanmati neither any utensil nor any poisonous substance was found nearby the place. It is also clear that the appellant was not knowing that the child consumed the poison, therefore, it was not possible for her to explain, and in such circumstances the absence of explanation cannot be accepted as an incriminating circumstance.

15) In view of the above discussion, we are of the considered view that it was not proved beyond reasonable doubt that Jyotibai was killed by the appellant by administering poison to her. In the result, the appeal is allowed. The judgment of conviction and order of sentence passed by the trial Court is set aside and the appellant is acquitted of the charge under Section 302 of the IPC. It is directed that she be set at liberty forthwith, if not required to be detained for any other valid reasons.

Sd/- **V.K. Shrivatava** **Judge**	**Sd/-** **Dhirendra Mishra** **Judge**

Raju